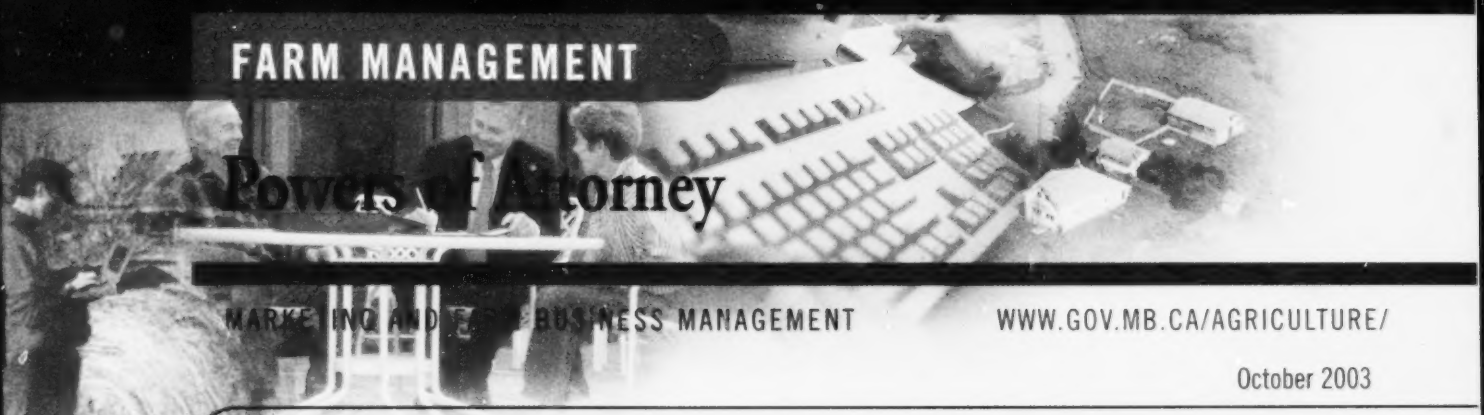

Powers of Attorney

October 2003

What would happen if you became ill or were in an accident resulting in your inability to manage your personal and financial affairs? Everyone should anticipate this possibility. You can make arrangements in advance so personal and financial affairs are handled properly if you become physically or mentally incapacitated.

This type of planning has two advantages. First, although you will give up control over your affairs when you are no longer capable of handling them, you will have the satisfaction of knowing you have ensured that they will be managed properly. Second, whoever has been entrusted with this responsibility will benefit from knowing your wishes.

There are a number of ways in which a person's affairs can be managed once he/she is no longer capable. A common method is by **power of attorney**. A **power of attorney (PA)** is a written legal document in which you appoint one or more individuals to manage your affairs under certain circumstances. Its purpose is to provide you with the comfort that your wishes will be carried out in situations in which you are unable to act on your own behalf. Although this power can be very broad, it does not allow a person to make health care decisions. It is useful if you are unable to adequately manage your affairs due to limited mobility or an extended absence.

The person who transfers the power is called the *donor*, and the person receiving the power is called the *attorney*. An attorney need not be a lawyer. The person you choose may be a trusted friend, a relative, a spouse or a trust company.

The duties of an attorney include:

- to act in accordance with the instructions in the document granting the power of attorney;
- to use the power granted for your benefit, and no other purpose; and
- to keep accurate records of all transactions concerning your affairs.

Almost anyone can be chosen as an attorney, as long as he/she is 18 years of age and mentally capable. A person named, as an attorney, does not have to accept the responsibility and may refuse to act in that capacity.

It is important to note that when you give someone power of attorney, you retain the right to manage your own affairs. You are still free to deal with any property, bank accounts, or investments that are included in the power of attorney.

In the event that you did not prepare a power of attorney, and subsequently became mentally incompetent, i.e. suffered a stroke or developed Alzheimer's disease, it may become necessary for the court to grant an order of committeeship. A committee is a person, appointed by and accountable to the court, who handles the affairs of a mentally incompetent person. The committee can be a family member, friend, trust company or the public trustee.

Powers of attorney can be general in nature giving the attorney a broad range of authority or can be granted for a specific purpose and/or for a specific period of time. You may, for example, give someone a specific power of attorney to conduct your banking.

An **enduring (or continuing) power of attorney** is not terminated by the mental incompetence of the **donor** if the power of attorney:

- is in writing;
- is signed by the donor in the presence of a witness;
- is signed by the witness in the presence of the donor; and
- states that it is to continue despite the mental incompetence of the donor.

An attorney is usually a spouse, a child/children or a close friend. An individual is eligible to be an attorney under an enduring power of attorney if, at the time the donor signs the document, the individual is an adult and mentally competent and is not an undischarged bankrupt.

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Building for the Future

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In Manitoba, an enduring power of attorney must be witnessed by:

- an individual registered, or qualified to be registered, under section 3 of *The Marriage Act* to solemnize marriages;
- a judge of a superior court of the province;
- a justice of the peace, magistrate or provincial judge;
- a duly qualified medical practitioner;
- a notary public appointed for the province;
- a lawyer entitled to practice in the province;
- a member of the Royal Canadian Mounted Police; or
- a member of a municipal police force in the province who exercises the powers of a peace officer.

Unless the PA document states otherwise, an **attorney** has the same authority with respect to assets obtained (by the **donor**) before or after the PA is signed. Also, if the intent is to cancel the PA, this should be clearly communicated in writing to the attorney. Where the attorney did not know, and with the exercise of reasonable care, could not have known of the termination before acting, the attorney (in this situation) is not liable to you or your estate.

It is recommended that you appoint an alternate attorney in the PA document. Since land cannot be transferred by power of attorney to the attorney, this will ensure that, where your spouse is the first attorney appointed, an election could still be made under homestead legislation.

Where two or more attorneys are appointed, without indicating in the PA document whether they are to act jointly or successively, the attorneys shall act successively in the order in which they are named in the document.

Unless otherwise provided in the PA document, where two or more attorneys are appointed to act jointly, disagree and are unable to make a majority decision, the attorney named first in the document may make the decision.

You may also appoint a "Recipient of an Accounting". This is someone, other than the court, who may ask the attorney(s) for an accounting of your financial matters (while you have been incapacitated). This will ensure that your attorney is acting in your best interests.

Attorneys are not entitled to compensation unless specifically provided for in the PA document.

Health Care Directives

Because of the advances in medical research and treatment today, many people fear that life may be prolonged regardless of their quality of life or their personal wishes.

In Manitoba, *The Health Care Directives Act* acknowledges and respects that you have the right to accept or refuse medical treatment. As part of your estate plan you may want to have a health directive, also referred to as a *living will*, which allows you to make choices about your future medical care.

A **health care directive** is a written document that allows you to express your specific instructions as to the level and type of medical treatment you want performed if you are unable to indicate your wishes because of mental incompetence or inability to communicate. A directive also allows you to appoint another person called the *proxy*, to make health care decisions on your behalf if you are unable to do so.

To be valid, a **health care directive form** must be in writing, signed and dated. This form acts as a guide for providing the proper information in a health care directive but it is not a requirement. The directive will be binding on health care professionals and your proxy provided the instructions are consistent with accepted medical practices.

The person making the directive must be at least 16 years of age and be able to understand the consequences of his/her decision. This directive can be changed at any time.

The Manitoba government has prepared a health care directive form (included) that you may use. Copies are also available from the Seniors Information Line at 945-6565 (toll free 1-800-665-6565).

THIS IS A CONTINUING POWER OF ATTORNEY

Made in accordance with the Powers of Attorney Act, Manitoba 1996, C62-Chapter P97

1. This Power of Attorney is given by _____ of
(insert Full Legal Name)

_____
(insert address)

2. I appoint _____
(insert Name & Address of Appointed Attorney(s))

to be my attorney in accordance with the Powers of Attorney Act and to do, on my behalf, anything that I can lawfully do by an attorney.

3. In accordance with the Powers of Attorney Act, I declare that this Power of Attorney may be exercised during any subsequent legal incapacity on my part. The foregoing indicates my intention that this document is a continuing Power of Attorney for property pursuant to S.10 (1) of the Powers of Attorney Act.

4. In making this Power of Attorney, I am aware:

- Of the nature and extent of my property.
- Of the obligations I owe to my dependants.
- That my attorney will be able to do, on my behalf, anything in respect of property that I could do if capable, except make a Will; except to the extent that this Power of Attorney sets out conditions and restrictions on the powers of my attorney.
- That my attorney must account for my attorney's dealings with my property.
- That I may, while capable, revoke this Power of Attorney.
- That the value of my property administered by my attorney may decline unless my attorney manages it prudently.
- That there is a possibility that my attorney could misuse the authority given to my attorney by this Power of Attorney.

5. I declare that, after due consideration, I am satisfied that the authority conferred on the Attorney named in this Power of Attorney is adequate to provide for the competent and effectual management of all my estate while living.

6. This Power of Attorney is subject to the following conditions, restrictions and supplementary powers:

    1. I authorize my attorney to exercise all such powers in my name as I would be able to exercise had I chosen to exercise such powers myself, or had I legal capacity to exercise such powers. This, therefore, authorizes my attorney to bind and secure information on behalf of my estate in respect of its dealings with any person. Without restricting the generality of the foregoing, it expressly constitutes my attorney as my "legal representative" for the purposes of s. 150(1)(d) and all other purposes of the Income Tax Act, and authorizes my attorney to bind and secure information on behalf of, my estate in respect of any matter involving the Government of Canada or any institution, such as a bank, regulated by the Government of Canada.

    2. I authorize my attorney to delegate any act my attorney may exercise to some other person and to revoke or suspend such delegation.

Disclaimer: This Power of Attorney has been prepared for general information purposes only and is intended to provide a starting point for farmers and others, as they develop such arrangements to meet their own specific needs. Persons relying on such information do so entirely at their own risk. Since it is impossible to cover all legal contingencies and provisions for every situation, please consult a legal professional to ensure that the Power of Attorney accurately reflects the needs and desires of the concerned parties.

3. I authorize my attorney to revoke or suspend any Powers of Attorney previously given by me. For greater certainty, it is my intention that I may have multiple continuing Powers of Attorney.

4. My attorney may manage my estate:

   - For my benefit
   - For the benefit of any person, including my attorney, to whom I am under a legal obligation to provide a benefit, to the extent my attorney considers it necessary to fulfill such obligation.
   - For the benefit of any charitable purpose or any person, including my attorney, my attorney considers I would have wished to benefit were I acting personally instead of by my attorney.

5. I authorize my attorney to take physical possession of all of my property, including property held in a safety deposit box, property held in safekeeping by others on my behalf and property held by others subject to some professional privilege, which privilege I waive for this purpose. For greater certainty, my attorney shall be entitled to review my Will in order to be able to manage my estate in a manner that is sensitive thereto.

I am the full age of 18 years.

Any reference to "Attorney" shall, if more than one, deemed to include the term "Attorneys", and any reference to the singular person shall likewise be deemed also to include the plural.

I have signed this Power of Attorney in the presence of both of the witnesses whose names appear below.

I have signed this Power of Attorney on the _____ day of
(Insert Day of Month)

_____ , _____
(Insert Month) **(Insert Year)**

_____
(Insert Name)

We are the witnesses to this Power of Attorney. We have signed this Power of Attorney in the presence of the person whose name appears above, and in the presence of each other, on the date shown above. Neither one of us is the attorney, a spouse or partner of the attorney, a child of the grantor or person whom the grantor has demonstrated a settled intention to treat as a child of the grantor, a person whose property is under guardianship or who has a guardian of the person, or less than eighteen years old.

WITNESSES:

_____	_____
Name of Witness	Name of Witness
_____	_____
Address of Witness	Address of Witness
_____	_____
Occupation	Occupation

HEALTH CARE DIRECTIVE / DIRECTIVE EN MATIÈRE DE SOINS DE SANTÉ

(Please type or print legibly/Prière de dactylographier ou d'écrire en caractères d'imprimerie)

This is the Health Care Directive of / Directive de

Name/Nom _____

Address/Adresse _____ City/Ville _____

Province/Province _____ Postal Code/Code postal _____ Tel./Tél. (204) _____

PART 1 – Designation of a Health Care Proxy / 1re PARTIE – Désignation de mandataire

You may name one or more persons who will have the power to make decisions concerning your medical treatment when you lack the ability to make those decisions yourself. If you do not wish to name a proxy, you may skip this part.
Vous pouvez autoriser une ou plusieurs personnes à prendre les décisions concernant vos traitements médicaux au cas où vous deviendriez incapable de les prendre vous-même. Si vous préférez ne pas désigner de mandataire, passez immédiatement à la 2e partie.

I hereby designate the following person(s) as my Health Care Proxy:
Je désigne par les présentes la ou les personnes suivantes à titre de mandataire :

Name of Proxy 1/Mandataire n°1 _____

Address/Adresse _____ City/Ville _____

Province/Province _____ Postal Code/Code postal _____ Tel./Tél. ( ) _____

Name of Proxy 2 (Optional)/Mandataire n°2 (facultatif) _____

Address/Adresse _____ City/Ville _____

Province/Province _____ Postal Code/Code postal _____ Tel./Tél. ( ) _____

If I have named more than one proxy, I wish them to act: consecutively ____ jointly ____ .
(Initial or check your choice. If you do not, Proxy 2 will be deemed to act only if Proxy 1 cannot or will not act.)
Je désire que les mandataires que j'ai nommés, s'il y en a plus d'un, agissent séparément ____ , ou conjointement ____ .
(Paraphez ou cochez à l'endroit choisi. À défaut de choix, le mandataire n°2 sera réputé agir séparément en cas d'incapacité du mandataire n°1.

I place no restriction on the ability of my Health Care Proxy to make medical decisions on my behalf when I lack the capacity to do so for myself, except as follows:
La présente autorisation que j'accorde à mon ou à mes mandataires de prendre des décisions d'ordre médical en mon nom lorsque je suis incapable de le faire moi-même n'est assortie d'aucune restriction, sauf de la suivante:

_____

_____

_____

_____

_____

_____

_____

PART 2 – Treatment Instructions / 2e PARTIE – Traitement

In this part, you may set out your instructions concerning medical treatment which you do or do not wish to receive and the circumstances in which you do or do not wish to receive that treatment. REMEMBER – your instructions can only be carried out if they are set out clearly and precisely. If you do not wish to express any treatment instructions, you may skip this part.

Dans la présente partie, vous pouvez donner vos directives en ce qui concerne les traitements médicaux que vous désirez ou ne désirez pas recevoir et décrire les circonstances dans lesquelles ces traitements peuvent ou non vous être administrés. SOUVENEZ-VOUS que vos directives ne peuvent être suivies que si elles sont claires et précises Si vous préférez ne pas donner de directives au sujet de vos traitements médicaux, passez immédiatement à la 3e partie.

_____

_____

_____

_____

_____

_____

PART 3 – Signature and Date / 3e PARTIE – Signature et date

In order to be valid this Health Care Directive **must** be dated and signed by you. No witness is required.
Vous **devez** signer et dater la présente formule pour qu'elle soit valide. Aucun témoin n'est nécessaire.

Signature/Signature _____ Date/Date _____

If you are unable to sign yourself, you may have someone sign on your behalf. In that case, the substitute must sign in your presence and in the presence of a witness. The proxy or the proxy's spouse cannot be the substitute signer or witness.

Si vous êtes dans l'incapacité de signer personnellement, vous pouvez demander à quelqu'un de le faire à votre place. Dans ce cas, votre remplaçant doit signer en votre présence et en présence d'un témoin. Les mandataires et leur conjoint ne peuvent pas signer à titre de remplaçant ni de témoin.

Name of substitute/Nom du remplaçant _____

Address/Adresse _____

Signature/Signature _____

Date/Date _____

Name of witness/Nom du témoin _____

Address/Adresse _____

Signature/Signature _____

Date/Date _____

Notes

For Further Information Contact Your Local Manitoba Agriculture and Food Office.

Prepared By:
Robert McKenzie, P.Ag.
Farm Management Specialist

Scott Stothers, P.Ag.
Farm Management Specialist